

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-050966

07/19/2010

HONORABLE MICHAEL R. MCVEY

CLERK OF THE COURT
R. Tomlinson
Deputy

HELVETICA SERVICING INC, et al.

DONNELLY A DYBUS

v.

KELLY R PASQUAN, et al.

KELLY R PASQUAN
10601 N MONTROSE WAY
SCOTTSDALE AZ 85254

VISHNU R JONNALAGADDA
DANIEL L KLOBERDANZ
THOMAS PURCELL LIDDY
BRANDON A NEWTON

MINUTE ENTRY

The Court has considered Plaintiff/Defendant Helvetica Servicing, Inc.'s ("Helvetica") Motion to Quash and Declare Null and Void Sheriff's Redemption by Joseph J. Giraudo ("Giraudo"), Joseph Giraudo's Response to Helvetica's Various Motions Filed to Date, and Helvetica's Reply.

On September 27, 2006, Helvetica filed a Deed of Trust with the Maricopa County Recorder's Office. That deed secured a promissory note signed by the owners of the property, for a loan of \$3,400,000.00.

On June 18, 2007, Giraudo duly recorded a Deed of Trust against the same property. That deed secured a second promissory note signed by the owners in the amount of \$200,000.00.

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Helvetica's lien was senior to that of Giraudo, and all other lien holders.

Helvetica filed a judicial foreclosure suit on its deed of trust on March 31, 2008. Helvetica did not name Giraudo or any other lienholder as defendants in the foreclosure action.

A Sheriff's sale was conducted on this property on July 9, 2009. Helvetica was the sole bidder. It purchased the property for \$400,000.00.

On September 4, 2009, Giraudo timely recorded his Notice of Intent to Redeem pursuant to A.R.S. § 12-1285. Giraudo also delivered a cashier's check to the Sheriff in the amount of \$432,000.00 (the bid price plus the statutory 8% amount).

The parties present two issues to this Court: 1) was Giraudo's lien extinguished by the Sheriff's sale; and 2) whether Giraudo properly redeemed the property.

Giraudo's right to redeem was not extinguished by the foreclosure judgment or by the Sheriff's sale. When a senior lender elects to foreclose its lien without naming a junior lienholder as a party to the judicial foreclosure proceeding, that junior lienholder's interest is not extinguished by the judgment of foreclosure. *Hummel v. Citizens' Building and Loan Association*, 38 Ariz. 54, 296 P. 1014 (1931). The *Hummel* court stated that a junior lienholder, not named in the foreclosure suit has two options: "He may sue for foreclosure of his lien, or if he desires, he may take advantage of the redemption statute and redeem according to its terms." *Hummel*, 38 Ariz. at 59, 296 P at 1016.

Having determined that Giraudo had the right to redeem, the Court must determine whether Giraudo properly redeemed according to the term of Arizona's redemption statutes in September 2009. At oral argument, Giraudo's counsel conceded that if the amount paid by Giraudo (\$432,000.00) to the Sheriff was insufficient, the redemption was improper, and Helvetica's motion should be granted.

Giraudo relies upon A.R.S. § 12-1285 in asserting that he was only required to pay \$432,000.00 to redeem the property. Specifically, Giraudo relies upon A.R.S. § 12-1285(A) which provides:

In redeeming property the judgment debtor shall pay the amount of the purchase price with eight percent added thereto, together with the amount of any assessment or taxes which the purchaser has lawfully paid thereon.

Both parties agree that A.R.S. § 12-1285(B) is determinative. That statute provides:

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B. Each subsequent redemptioner shall pay the aggregate of such amounts plus the amount of the lien thereon by the ones who may have redeemed the property theretofore. **If the purchaser is also a creditor** having a prior lien to that of the redemptioner, **other than the judgment lien**, the redemptioner shall pay, in addition, the amount of the creditor's lien with interest. (Emphasis added).

Finally, Helvetica also relies upon A.R.S. § 12-1282(C) which provides that Giraudo "may redeem by paying the amount for which the property was sold and all liens prior to his own held by the person from whom redemption is made."

These statutes must be read in harmony with one another. At the time of Giraudo's redemption, Helvetica still had a lien, represented by its Deed of Trust, in the amount of \$3,400,000.00. A redemption check of \$432,000.00 was plainly insufficient.

IT IS ORDERED granting Helvetica Servicing, Inc.'s Motion to Quash and Declare Null and Void Sheriff's Redemption by Joseph J. Giraudo.